

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Amendment of 47 C.F.R.)

§ 1.1200 et seq. Concerning)

Ex Parte Presentations in)

Commission Proceedings)

FCC MAIL ROOM

GC Docket No. 95-21

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COMMENTS OF ROCHESTER
TELEPHONE CORP.

Rochester Telephone Corp. ("Rochester") submits these comments in response to the Commission's Notice initiating this proceeding.¹ The Commission generally proposes to simplify its ex parte rules and to limit the number and type of proceedings in which such presentations are prohibited. In addition, the Commission generally proposes to substitute a "permit-but-disclose" standard for a blanket prohibition on ex parte presentations.²

Rochester generally supports the Commission's proposed changes. Narrowing the types of proceedings in which ex parte presentations are completely prohibited to those for which the Administrative Procedure Act compels such a prohibition makes sense. In other proceedings, ex parte presentations often provide the Commission with valuable information that is useful in the decision-making process.

Moreover, if such presentations are made under a "permit-but-disclose" rule, the evils which the prohibition is intended to prevent -- undue influence on government

¹ Amendment of 47 C.F.R. § 1.1200 et seq. Concerning Ex Parte Presentations in Commission Proceedings, GC Dkt. 95-21, Notice of Proposed Rulemaking, FCC 95-52 (Feb. 7, 1995) ("Notice").

² Notice, ¶¶ 14-37.

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decision-making and decisions based upon a secret record³ -- would not exist. If the substance of such contacts is placed on the public record, all parties would know the information before the Commission and would have an opportunity to respond to the arguments or data presented by parties with adverse interests. Thus, the Commission will still be in the position of making determinations on the basis of a full *public* record and there is, therefore, no reason to believe that broader application of a "permit-but-disclose" standard would frustrate judicial review or undermine public confidence in the agency's decision-making process.⁴

There are, however, two aspects of the Notice that the Commission should decline to adopt -- the suggestion that tariff proceedings prior to investigation no longer be classified as exempt proceedings⁵ and the proposal to broaden the disclosure obligation in proceedings in which *ex parte* presentations are permitted.⁶ Today, tariff proceedings prior to investigation are classified as exempt from disclosure of *ex parte* contacts. There is no indication that the current system is unfair or is resulting in a systematic bias against any particular group.⁷ Moreover, with the tight deadlines under which tariffs must be processed -- unlike rulemakings and other types of proceedings -- such exempt contacts

³ See *id.* ¶¶ 17-22.

⁴ In addition, by simplifying the rules for the determination of the *ex parte* status of particular proceedings, interested parties would be far less at risk from incurring sanctions for engaging in prohibited *ex parte* contacts. See *id.*, ¶¶ 10-13.

⁵ *Id.*, ¶ 29

⁶ *Id.*, ¶ 45.

⁷ Exchange carriers today, for example, are subject to numerous tariff investigations, even though contacts prior to the initiation of such investigations are generally permitted.

permit agency personnel to process tariff filings within the statutory deadlines. Moreover, if tariff filings raise substantial questions, they may be -- and are -- subject to investigation, after which such proceedings are no longer exempt.

In addition, the Commission's proposal that it broaden the scope of the disclosure notice appears unnecessary. Under the existing rules, a party making an ex parte presentation must disclose new data and arguments presented in such a contact. Under the Commission's proposal, the disclosure notice must contain "a concise summary of the entire content of the presentation, including the issues discussed, the positions taken, and all argument and data presented."⁸ This appears overbroad. While Rochester agrees with the Commission that a mere listing of the issues discussed (presumably without disclosure of the positions on such issues taken by the party) is insufficient,⁹ the additional requirements are not needed. If the contact concerns arguments or data that are already in the record, a further rehash of those arguments or data will serve no useful purpose. Parties are already on notice of such information and have already had the opportunity to respond to such arguments or data. While disclosure of the fact of the contact may be useful, a full recitation of previously-presented arguments or data would amount to overkill.

The proposal to require essentially *all* positions taken or arguments and data presented appears overbroad. If new arguments or data are presented on behalf of a party making an ex parte contact, certainly that information should be fully disclosed, and the

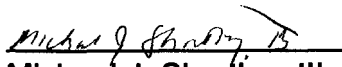
⁸ Proposed §1.1206(d)(2).

⁹ See Notice, ¶ 45.

current rules already require their disclosure. Requiring the disclosure of *all* positions taken and the like, even by personnel at the meeting that do not represent the party making the presentation, is not necessary to ensure the compilation of a full record or to ensure the integrity of the administrative process.

For the foregoing reasons, the Commission should act upon the proposals contained in the Notice in a manner consistent with the suggestions set forth herein.

Respectfully submitted,


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